IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2682 OF 2002
IN
SUIT NO.867 OF 2000

Bhupat T.Vora .. Plaintiff

vs

Jiten M.Busa & anr .. Defendants

Mr.B.A.Vora for Plaintiff

Mr.V.G.Mehta for Defendants.

CORAM : A.M.KHANWILKAR, J

DATE : 2nd April, 2007

P.C.

1. Heard counsel for the parties. Perused the relevant pleadings and documents on record.

2. This motion is for setting aside ex parte order passed against the defendants by this court on 19th April, 2007 in Notice of Motion No.901 of 2000. By the said Notice of Motion, the plaintiff had prayed for appointing Court Receiver in respect of several properties. In the alternative to restrain the defendants from transferring the suit properties and/or from creating any third party right, title or interest thereunder. This court on 19th April, 2001 opined that it is not a case for appointment of receiver. However, directed the defendants to pay an amount of Rs.1500/- towards interest portion of the amount advanced. It is not in dispute that

the defendants are depositing that amount regularly in this Court. Besides, it is seen that the present Notice of Motion is taken out on 25th September, 2002. Indeed, there is delay in taking out the present motion. But the circumstances in which it has been taken out for recall of the order dated 19th April, 2001 is set out in the affidavit in support of the motion. Today, before this Court counsel for the defendants submits that if the Notice of Motion No.901 of 2000 was to be heard and decided on merits, the defendants are willing to abide by the directions given in the said impugned order by depositing the amount of Rs.1500/- p.m. as well as would give an undertaking to this court that they will not create third party right, title or interest in the disputed property till the motion is finally decided and/or till such order is passed by this Court. Although this motion is opposed by counsel for the plaintiff, in my opinion, no prejudice will be caused to the plaintiffs if ex parte order dated 19th April, 2001 is to be recalled on accepting the undertaking given by the defendants before this Court.

Accordingly, this motion is made absolute in terms of prayer clause (a) on two conditions :

(i) The defendants shall not create third party rights on the properties in question.

(ii) The defendants shall continue to pay amount of Rs.1500/- p.m. towards interest

portion in terms of order dated 19th April,2001 till further orders to be passed by this court.

Notice of Motion No.901 of 2000 be placed for hearing under appropriate caption on 20th April, 2007.

(A.M.Khanwilkar, J)